

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

MARC VEASEY, ET AL.,	)	CASE NO: 2:13-CV-00193
	)	
Plaintiffs,	)	CIVIL
	)	
vs.	)	Corpus Christi, Texas
	)	
RICK PERRY, ET AL.,	)	Wednesday, June 18, 2014
	)	
Defendants.	)	(3:01 p.m. to 4:08 p.m.)

STATUS CONFERENCE

BEFORE THE HONORABLE NELVA GONZALES RAMOS,  
UNITED STATES DISTRICT JUDGE

Appearances:	See Next Page
Court Recorder:	Genay Rogan
Clerk:	Brandy Cortez
Transcriber:	Exceptional Reporting Services, Inc. P.O. Box 18668 Corpus Christi, TX 78480-8668 361 949-2988

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

APPEARANCES FOR:

## Plaintiffs:

ARMAND DERFNER, ESQ.  
P.O. Box 600  
Charleston, SC 29402

CHAD W. DUNN, ESQ.  
Brazil and Dunn  
4201 Cypress Creek Parkway, Suite 530  
Houston, TX 77068

Mexican American  
Legislative Caucus,  
et al.:

EZRA D. ROSENBERG, ESQ.  
Dechert, LLP  
902 Carnegie Center, Suite 500  
Princeton, NJ 08540-6531

Texas League of Young  
Voters Education Fund:

RYAN HAYGOOD, ESQ.  
NAACP Legal Defendant and Educational  
Funds, Inc.  
40 Rector Street  
5th Floor  
New York, NY 10006

## State of Texas:

JOHN BARRET SCOTT, ESQ.  
Scott, Yung, L.L.P.  
208 N. Market Street  
Suite 200  
Dallas, TX 75202

LINDSEY WOLF, ESQ.  
CLAY COALSON, ESQ.  
ARTHUR D'ANDREA, ESQ.

United States  
of America:

ANNA BALDWIN, ESQ.  
DANIEL FREEMAN, ESQ.  
U. S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
NWB Room 7125  
Washington, DC 20530

Mexican American  
Legislative Caucus,  
et al.:

KEMBEL SCOTT BRAZIL, ESQ.  
Brazil and Dunn  
4201 Cypress Creek Parkway  
Suite 530  
Houston, TX 77068

APPEARANCES FOR: (CONTINUED)

Texas Association of  
Hispanic County Judges  
and County  
Commissioners:

ROLANDO L. RIOS, ESQ.  
115 E. Travis  
Suite 1654  
San Antonio, TX 78205

Oscar Ortiz, et al.:

MARINDA VAN DALEN, ESQ.  
Texas Rio Grande Legal Aid  
4920 North IH 35  
Austin, TX 78751

Corpus Christi, Texas; Wednesday, June 18, 2014; 3:01 p.m.

(Call to Order)

**THE COURT:** The Court calls Cause Number 213-193, Veasey, et al versus State of Texas, et al.

Ms. Cortez will take roll here.

**THE CLERK:** Your Honor, for the individual Veaseys, we have Mr. Dunn and Mr. Derfner will be speaking. For the United States of America, Ms. Baldwin and Mr. Freeman will be speaking. The Mexican American Legislative Caucus, r. Rosenberg will be speaking. For Ortiz, et al, Ms. Van Dalen will be speaking. For the Association of County Judges, Mr. Rios. For the Texas League of Young Voters, Mr. Haygood will be speaking and for the State of Texas, Mr. Whitley, Ms. Wolf and possibly Mr. Scott will be speaking.

**THE COURT:** All right. Counsel, there's a couple of matters, I guess, pending before the Court and I'd like to address first. It's D324, Defendants' Motion to Compel Production of the Federal Databases. Who's going to proceed on that, Mr. Scott or Ms. Wolf or who?

**MR. WHITLEY:** Your Honor, this is David Whitley for the Defendants.

**THE COURT:** Okay.

**MR. WHITLEY:** The *Crawford versus Marion County Election Board* case was clear that the inconvenience of making a trip to the BMV, gathering up the required documents and

1 posing for a photograph surely does not qualify as a  
2 substantial burden on the right to vote or even represent a  
3 significant increase from the usual burdens of voting. Yet the  
4 Plaintiffs in this case still insist on making matches between  
5 the Secretary of State's TEAM database and the acceptable forms  
6 of ID on Election Day.

7           The last time the Department of Justice was able to  
8 play puppeteer and do those matches themselves, the Court threw  
9 out the expert reports of both sides in the case and that was  
10 in *Texas v Holder*. Now, both the U.S. and the Defendants  
11 requested each other's databases. To date, only the United  
12 States and the private Plaintiffs have received information  
13 from the State of Texas. The State has not received anything  
14 from the federal government other than what they used to make  
15 matches.

16           Now, the standard has never been that the other side  
17 thinks that it would be useful to have the information but  
18 rather, Rule 26 is clear it should be reasonably calculated to  
19 lead to the discovery of admissible evidence. And we should  
20 also not be required to disclose our expert trial strategy in  
21 this case to show --

22           **THE COURT:** Wait, wait -- are you addressing the  
23 Motion to Compel -- the Defendants' Motion to Compel the  
24 Production of Federal Databases?

25           **MR. WHITLEY:** Yes, ma'am.

1           **THE COURT:** Okay. Proceed.

2           **MR. WHITLEY:** Was that -- can I elaborate for you in  
3 a specific way that will make it more useful for you, your  
4 Honor?

5           **THE COURT:** Sure.

6           **MR. WHITLEY:** The United States has asked us explain  
7 to them why the federal databases would be useful to us and  
8 that is not the standard. That's what I was explaining earlier  
9 but here's something that we've learned while taking  
10 depositions in this case. In the deposition of Michele  
11 Bessiake, she admitted that she was at the time of her  
12 testimony registered to vote in both Texas and Indiana. She's  
13 also in possession of an Indiana -- the State of Indiana  
14 learner's permit to drive which she obtained after registering  
15 to vote in Texas. She also plans to get a driver's license in  
16 Indiana.

17           Now, Ms. Bessiake would most likely show up as a  
18 non-match because she doesn't have the acceptable forms of ID  
19 to vote in Texas yet she will have an Indiana driver's license  
20 and without access to the federal databases, we would have  
21 never known that and without having the opportunity to depose  
22 her, which depending on the number of non-matches, we certainly  
23 wouldn't have time to depose each and every one of these  
24 people, we would never know.

25           Under the current agreement, which is ECF 174 which

1 is now arguably been blown up, we were prepared for the cross  
2 examination of their experts under the agreement that they  
3 would not have the TEAM database but now they do. Now  
4 everybody has TEAM and we need access to the federal databases  
5 to be situated similarly.

6 **THE COURT:** All right. Who is going to speak for the  
7 United States?

8 **MS. BALDWIN:** Your Honor, this is Anna Baldwin for  
9 the United States.

10 **THE COURT:** Okay.

11 **MS. BALDWIN:** The Defendants' request for massive  
12 amounts of sensitive, legally-protected information about tens  
13 of millions of U.S. citizens with no connection to this  
14 litigation threatens the real information (indiscernible). As  
15 counsel has essentially admitted, the request disregards the  
16 Court's protective order. It unnecessarily compromises the  
17 privacy interests of millions of Americans and it triggers  
18 profound data security issues for multiple federal agencies  
19 that maintain a great deal of highly sensitive medical and  
20 national security information.

21 I just want to say out -- up front when the idea that  
22 the State hasn't received anything from the federal government  
23 is simply incorrect. The Defendants have already received  
24 precisely what they bargained for and what the other parties  
25 bargained for and precisely what this Court ordered in

1 accordance with ECF Number 174. They have data from five  
2 different federal agencies, the federal agencies that either  
3 issue a form of SB 14 allowable ID or make disability  
4 determinations relevant for applying for an exemption from  
5 showing ID.

6 To be very concrete, your Honor, from the State  
7 Department, Defendants have a data set with information  
8 supplied directly by the State Department showing person by  
9 person for every one of the more than 13 million registered  
10 voters in Texas which of those registered voters have the same  
11 social security number as a passport number -- as a passport  
12 holder as well as which Texas voters have the same name or date  
13 of birth as the passport holder.

14 From the Department of Defense, the Defendants and  
15 all other parties have the same thing. They have, again, a  
16 list of information supplied directly from the Defense  
17 Department of exactly which of Texas' more than 13 million  
18 registered voters have the same social security number as the  
19 holder of military ID or the same name and date of birth as the  
20 military ID holder. And the same is true for the other federal  
21 agencies involved, the SSA, the VA and USCIS.

22 Defendants know down to the individual voter whether  
23 the agencies involved have records that match with the search  
24 criteria that Defendants supplied it on which were the social  
25 security number and certain combinations of the name and date



1 of birth.

2 In this process, Defendants got to decide exactly how  
3 they wanted the federal databases to match. They provided  
4 their list of matching criteria to the United States which the  
5 United States counsel in turn provided to the agencies. The  
6 agencies executed that list and provided match results to all  
7 parties. Along with match results, the United States produced  
8 sworn declarations from staff at each agency telling exactly  
9 what steps they took in conducting the matches.

10 Defendants' request for more information is just  
11 actually (indiscernible). Of the two samples that we just  
12 heard about whether a voter could be registered in another  
13 state, there is no federal database that shows voter  
14 registration nationwide and we told Defendants that. That's  
15 certainly not information the State Department, Defense  
16 Department, SSA, VA or USCIS maintains. The same thing is true  
17 about driver's licenses. There is no master data set that we  
18 are aware of and especially from any of these agencies involved  
19 that have a list of everybody who has a driver's license in any  
20 state and at any rate, that's all beside the point because  
21 having an Indiana driver's license, of course, doesn't entitle  
22 you to vote under SB 14.

23 The Defendants already have all of the relevant  
24 information that was derived from the federal databases at  
25 issue. Their (indiscernible) demand violates the supplemental

1 protective order of the federal confidentiality statutes and  
2 the federal rules. As to the protective order, your Honor,  
3 again, Defendants have essentially conceded that the request is  
4 totally inconsistent with ECF Number 174 which provides that  
5 federal data directly from the databases, the raw field  
6 contents were not going to be provided to any party.

7 That order set out the procedure that all parties  
8 have been operating under in this case, namely that each party  
9 was going to come up with match results which the federal  
10 agencies would execute and all parties would receive the  
11 results. That process has already occurred. There's no basis  
12 for nullifying that order, especially after Defendants have  
13 received the match results.

14 **THE COURT:** All right.

15 **MS. BALDWIN:** And --

16 **THE COURT:** Mr. -- are you finished?

17 **MS. BALDWIN:** I was going to talk about the specific  
18 confidentiality statutes but those were in our briefing of the  
19 United States. So if the Court doesn't have questions on that,  
20 I'm --

21 **THE COURT:** No, I've already looked at that.

22 Mr. Dunn?

23 **MR. DUNN:** We have nothing to add, your Honor.

24 **THE COURT:** Okay. Mr. --

25 **MR. DUNN:** Well, I was just going to say -- no,

1 that's fine.

2 **THE COURT:** Mr. Rosenberg?

3 **MR. ROSENBERG:** We will rely on what DOJ has said.

4 Thank you.

5 **THE COURT:** Okay. Ms. Van Dalen?

6 **MS. VAN DALEN:** Nothing to add, your Honor.

7 **THE COURT:** Mr. Rios?

8 **MR. RIOS:** Nothing to add, your Honor.

9 **THE COURT:** And Mr. Haygood? Nada? Okay.

10 Mr. Whitley, I'll let you have the last comment.

11 **MR. WHITLEY:** Thank you, your Honor. David Whitley  
12 with the Defendants. I'm glad Ms. Baldwin brought up the ECF  
13 Number 174 because that document stated clearly that the TEAM  
14 would be in the possession of the United States solely and now  
15 the TEAM is in the possession of all the private Plaintiffs in  
16 this case.

17 Furthermore, we're not looking for a nationwide  
18 registration database. Rather, we are looking for ways that  
19 the federal databases will allow us to further narrow down our  
20 match lists by the access that they have to other states'  
21 information. That's why I brought up the Indiana example. And  
22 the *Texas v Holder* Court talked extensively about the matching  
23 process done by the federal government in the last case. It  
24 involved dead people, duplicates, simply incorrect, no matches.  
25 We're in the exact same situation in this case. The data was

1 scrubbed incorrectly last time and we would like to know  
2 whether or not it has been scrubbed incorrectly this time. The  
3 matching process is fundamentally flawed.

4 And lastly, your Honor, the protective order protects  
5 the information from the Texas databases. It would also  
6 protect the information from the federal databases. They --  
7 the Department of Justice has never provided an explanation as  
8 to why sensitive, personal information in the federal database  
9 could not be turned over under the same confidentiality  
10 agreement. Thank you, your Honor.

11 **THE COURT:** All right. The Court's going to deny  
12 Defendants' motion to compel production of the federal  
13 databases.

14 The next thing I have is I believe yesterday was  
15 filed the Secretary of State's mission for protection regarding  
16 the deposition of Coby Shorter (phonetic). Where are we on  
17 that?

18 **MR. WHITLEY:** Your Honor, this is David Whitley. I  
19 can speak briefly to that as well, hopefully with a little bit  
20 more success. But we are still in negotiations with the United  
21 States. The reason I was filing it is because the time for  
22 compliance on the subpoena had come and we wanted to make sure  
23 that that was on file to protect Mr. Shorter's rights. We are  
24 still discussing with the United States dates for his  
25 deposition and working on the time and topics for that.

1           **THE COURT:** Okay. So nothing to discuss on that  
2 today? That's what it sounds like.

3           **MR. WHITLEY:** No, your Honor, not from the standpoint  
4 of the Defendants.

5           **THE COURT:** Then --

6           **MR. SCOTT:** Your Honor, John Scott for Texas. One  
7 quick thing --

8           **THE COURT:** Okay.

9           **MR. SCOTT:** -- in terms of, I guess, what you ruled  
10 on the databases. And I want to throw this out. There is a --  
11 it appears we're going to be needing a lot of time during trial  
12 for our offer of proofs and I don't know how that's going to be  
13 accounted for on time with regard to the weeks that's been  
14 allotted to Texas. Is that something the Court would prefer we  
15 arrange that we going to do after hours? Just, again, the  
16 priority because we're starting to get a whole lot of stuff  
17 that it doesn't look like we're going to get a chance to ever  
18 put on any evidence in defense of the case.

19           **THE COURT:** Wait. What --

20           **MR. SCOTT:** I need to know how we're going to proceed  
21 to do that and --

22           **THE COURT:** Proceed doing with your -- I'm sorry --  
23 with your evidence?

24           **MR. SCOTT:** Well, we have a -- yes, your Honor.  
25 We've got an enormous amount of things. This simple issue that

1 you just raised by not giving us access to those databases, the  
2 information that we believe would have been obtainable by  
3 finding those, we'll be having to at least make an offer of  
4 proof in the record during the time of trial. I'm trying to  
5 get a grasp --

6 **THE COURT:** Okay. I see what you're saying. I see.  
7 You're wondering if that's going to be part of your trial time?

8 **MR. SCOTT:** Yes, ma'am.

9 **THE COURT:** I don't -- I guess we can do that after  
10 hours so we don't count it as part of your trial time.

11 **MR. SCOTT:** Thank you, your Honor.

12 **THE COURT:** Okay. All right. We were -- did we  
13 finish the issue on Shorter, Coby Shorter? Because you-all are  
14 going to be conferring, so there was nothing for the Court to  
15 address there.

16 Then on Monday there was a filing by the Defendants  
17 regarding the United States' motion for protective order on the  
18 Rule 30(b)(6) notice. I've not gone back to look at the  
19 initial briefing on that. So I don't know what we can do  
20 today. The Defendants filed a statement on that.

21 Ms. Baldwin, do you have anything on that?

22 **MS. BALDWIN:** Your Honor, we have been working  
23 diligently with Defendants to try and not have to burden the  
24 Court with this but there are a number of disputes that are  
25 topics that are still in dispute. Well, I would say at the

1 outset, however, your Honor, is that Defendants have waived  
2 their opposition and it's our position that, you know, this  
3 motion should be granted as a matter of law.

4 **THE COURT:** Right. Why have they waived anything?  
5 We've been at this for a while now. Every time we have a  
6 status, I ask about it and you-all are still conferring. So  
7 what have they waived?

8 **MS. BALDWIN:** Under Local Rule 7.4, your Honor, the  
9 motion was filed on May 2nd and absolutely we've been  
10 conferring but there was still a return date set on the docket  
11 per the Local Rules of June 2nd and no written opposition has  
12 been filed to date.

13 **THE COURT:** I'm sorry. I'm not going to do that. We  
14 have been dealing with this and -- for a while now. So let's  
15 not do that.

16 **MS. BALDWIN:** As to the merits, your Honor, there are  
17 a number of issues that are sufficiently weighty that, again,  
18 because Defendants haven't briefed it, we would ask that the  
19 Court set a briefing schedule wherein the Defendants would  
20 respond to, you know, the positions that we've already set out,  
21 let's say, by Wednesday of next week and we would propose to  
22 quickly respond by June 30th.

23 **THE COURT:** Mr. Scott, do --

24 **MR. SCOTT:** Your Honor, John Scott. There is an  
25 enormous of briefing already done. It simply requires the --

1           **THE COURT:** Right. I think this statement by the  
2 Defendant has kind of narrowed it down for the Court; is that  
3 correct -- what was filed on Monday as to what's still an issue  
4 or no?

5           **MS. BALDWIN:** Yes. Your Honor, this is Ms. Baldwin.  
6 It has narrowed the number of topics and I'm happy to address  
7 the merits of those if that would be of assistance to the  
8 Court.

9           **THE COURT:** I guess you can proceed, Ms. Baldwin, to  
10 address what's outstanding.

11           **MS. BALDWIN:** Okay. The first topic that is listed  
12 is administrative preclearance under Section 5 of The Voting  
13 Rights Act. Deposition testimony on this topic should be  
14 barred for at least four weeks. It's irrelevant. It's wildly  
15 overbroad as stated. Any discovery of the information is  
16 privileged (indiscernible) for exercising its discretion  
17 (indiscernible) information would (indiscernible) decades that  
18 failed to (indiscernible) and for accumulative and non-  
19 published information that has already been produced by the DOJ  
20 in an effort to avoid unnecessary discovery disputes.

21           Your Honor, first on relevance, there is absolutely  
22 no relevance to this topic in this case even as limited by  
23 Defendants to Section 5 preclearance admission being made in  
24 2004. For the 16 states that were subject to Section 5 of The  
25 Voting Rights Act from 2004 until 2013, there were more than



1 2,100 submissions on that topic. Either it's laws that have  
2 nothing to do with SB 14 and it's under -- being reviewed under  
3 an entirely separate section of The Voting Rights Act.

4 Defendants are asking about many, many different laws  
5 with no explanation for what relevance is here in this case,  
6 again, on, you know, over-breadth. Again, we're talking about  
7 more than 2,000 submissions. There is no way to designate a  
8 deponent on these topics who could be reasonably well-prepared  
9 to talk about all of them. The topic on its face fails to  
10 comply with Rule 30(b)(6), its reasonable particularity  
11 requirement.

12 On the argument of general discoverability, if  
13 (indiscernible) topic which is improperly (indiscernible) on  
14 its face, what Defendants are really try to get at is that they  
15 want to explore why the Attorney General pre-clears some laws  
16 and not others. That is absolutely inappropriate. *Morris v*  
17 *Gressette*, a Supreme Court decision, held that Congress  
18 intended to preclude judicial review of all of the Attorney  
19 Generals who exercise discretion in the preclearance  
20 determination. As such, there's no basis for Defendants to  
21 seek this sort of discovery which would raise attorney-client,  
22 work product and deliberative process issues.

23 And last, your Honor, where a Section 5 preclearance  
24 file could possibly have any relevance, we already provided the  
25 underlying non-privileged document. Defendants have the

1 entirety of the preclearance file, the non-privileged portion  
2 for SB 14. They know every witness that the Department of  
3 Justice talked to in the preclearance process and they even  
4 have the witness interview notes. In *Texas v Holder*, they also  
5 received preclearance files for two other federal laws. While  
6 we certainly don't concede that those files are relevant,  
7 Defendants already have them.

8 I have had many, many conversations with Defendants  
9 about this topic. They haven't identified a single non-  
10 privileged area that they want to explore, much less explained  
11 how it's relevant in any of the (indiscernible).

12 **THE COURT:** All right. Who's covering that issue  
13 from the Defendants on the administrative preclearance?

14 **MS. WOLF:** Your Honor, this is Lindsey Wolf and I  
15 will be covering that issue for the Defendants.

16 **THE COURT:** Okay, go ahead.

17 **MS. WOLF:** Your Honor, I think one point to point out  
18 at the beginning is that it seems to me that the United States  
19 is seeking to be treated as a special kind of litigant and I  
20 think that the case law is clear that 30(b)(6) depositions of  
21 federal agencies are not inappropriate. Government agencies  
22 are to be treated as if they're ordinary litigants and they  
23 must abide by the Federal Rules of Civil Procedure and that's a  
24 case out of the Southern District of Florida involving the FCC.

25 The Department of Justice representative in other

1 cases has been the subject of 30(b)(6) depositions. There's a  
2 bankruptcy case out of the District of Massachusetts where that  
3 was the case. And on top of that, there's a Voting Rights Act  
4 case involving both Section 5 and Section 2 out of the District  
5 of South Carolina which doesn't elaborate very much but refers  
6 to the deposition testimony of Duval Patrick who  
7 (indiscernible) charges of the Civil Rights Division of the  
8 Department of Justice.

9           And so I think the first point he made is that this  
10 is not -- seeking the deposition of a DOJ representative is not  
11 unprecedented and I think that what we're running into is an  
12 issue where it seems that the Department of Justice is using  
13 The Voting Rights Act as a double-edge sword which essentially  
14 allows them to pierce certain privileges at least for discovery  
15 purposes but in turn shield can them from a 30(b)(6) deposition  
16 or other ordinary discovery techniques.

17           And in terms of the topic -- in respect to the  
18 administrative preclearance topic, it seems that the United  
19 States -- you know, the (indiscernible) by Ms. Baldwin deals  
20 with judicial review of preclearance position. It did not  
21 discuss discovery. It did not discuss the ability of a  
22 litigant to obtain discovery upon providing a Section 5 file.  
23 It dealt with judicially reviewing a preclearance position.

24           I think that in a case -- another case which was a  
25 State Department defendant -- I'm sorry -- (indiscernible) the

1 United States in response to a request for production  
2 propounded by Defendant, *Cofield versus City of LaGrange*, the  
3 Court determined that the Section 5 file was properly  
4 discoverable in a Section 2 case.

5 And, you know, in terms of the assertion of  
6 privileges, there's an exception for the delivery of process  
7 privilege. The delivery of process privilege is a qualified  
8 privilege, particularly where the purpose of the Government's  
9 action in a particular case is at issue.

10 In addition, the delivery of process privilege, there  
11 is an exception which is referred to as the "working law  
12 exception" which is if there are opinions and interpretations  
13 which the bind the agency's effective law and policy, you can't  
14 withhold the papers which essentially reflect the agency's  
15 group thinking and the process of working out its policy and  
16 determining what its (indiscernible) shall be and that's a  
17 Second Circuit case from 2012.

18 And, you know, so we're placed in a position where  
19 we're not entitled to seek discovery through this vehicle and  
20 in terms of the breadth of the topic, I think what the United  
21 States has pointed to and what we reiterate is that we're  
22 seeking information regarding the process of how the  
23 preclearance submissions are submitted and the document  
24 production on this standing alone are not sufficient. Mostly  
25 they only relate to the preclearance in SB 14. It doesn't

1 relate to the larger preclearance process and how the DOJ  
2 handles that process.

3 And in connection with that, one of the remedies that  
4 both the Department of Justice and every other Plaintiff who  
5 filed a complaint in this action is seeking is veiled in --  
6 under Section 3C of The Voting Rights Act which is essentially  
7 obtaining preclearance of the voting changes that the State of  
8 Texas would seek to annex going forward.

9 So in terms of that remedy, this particular type of  
10 discovery is appropriate because we are entitled to probe into  
11 how this process is done. And I think we have tried to work  
12 with them. We have tried to limit this temporally going back a  
13 decade in order to, you know, not make it apply to every single  
14 administrative preclearance admission that they've ever  
15 received but we've got to know where they're at, your Honor.

16 The final point I would make in terms of relevance is  
17 both the United States and the other Plaintiffs have made  
18 numerous allegations in their complaints regarding the  
19 intervention which they've alleged has been necessary dating  
20 back centuries. The United States cites a case dating back to  
21 1927 regarding Texas' voting practices and so they put this  
22 historical evaluation of Texas' voting practices into issue.  
23 They made it relevant in our complaint and, in turn, we would  
24 argue that we are entitled to probe as to how those decisions  
25 have been made, your Honor.

1           **THE COURT:** All right. Anything further,  
2 Ms. Baldwin?

3           **MS. BALDWIN:** If I could respond just very briefly.  
4 First, we're not making a categorical argument that the  
5 Department of Justice should never be subjected to 30(b)(6),  
6 only that these topics are inappropriate.

7           Second, the relevance point, I've heard no argument  
8 for why this is relevant to the claim that SB 14 violates  
9 sections of The Voting Rights Act or any of the other private  
10 Plaintiff's Constitutional claims. How the -- what remedy we  
11 may be seeking, how the DOJ's process is in the past are even  
12 relevant as to afford a remedy seems to have no relevance but  
13 at any rate, that's absolutely not relevant to the claim.

14           And in terms of what information Defendants already  
15 have, again, they have all the facts that the Department  
16 considered as to SB 14. They don't have the privileged  
17 information that the Supreme Court has said is not reviewable,  
18 that decades of case law, unquestioned case law says is not  
19 reviewable. *Cofield v LaGrange*, which was just cited as to how  
20 contrary this position is, is absolutely not. That is about  
21 discovery of the underlying preclearance documents which we've  
22 already produced.

23           The only, you know, broad sweep on relevance that's  
24 been argued is the purpose of the Government's action where the  
25 Government here is the United States but the Government's

1 actions as the United States' actions in this case are not at  
2 issue. That's not at all relevant to the claim that's being  
3 brought to the extent that the Defendants are making an  
4 argument about some counterclaim that they may get but there's  
5 no counterclaim asserted. There's no counterclaim pending.  
6 Discovery on any such future counterclaim is absolutely not  
7 proper under the scope of Rule 26 and the 2000 comments make  
8 that clear.

9 **THE COURT:** All right. Let's go to Topic 2.  
10 Ms. Baldwin?

11 **MS. BALDWIN:** Topic 2 is the enforcement of Section 2  
12 of The Voting Rights Act. Again, this is incredibly overbroad.  
13 How the Attorney General has exercised his discretion in  
14 enforcing Section 2 is irrelevant here and the topic is even on  
15 its face limited to the Attorney General's enforcement. It  
16 would need to encompass what private parties have done. We  
17 began to ask what facts the (indiscernible) attempted to get  
18 at, asked that these documents stipulate the facts but that's  
19 not what we understand has been sought here.

20 Again, this appears to be another improper attempt to  
21 oppose opposing counsel about the nature and scope of the  
22 Department's enforcement of priorities and its exercise of  
23 prosecutorial discretion. None of that is relevant to the  
24 claim. Again, if this is a counterclaim issue, 26(b) can find  
25 discovery is an actual claim.

1           If and when Defendants raise a counterclaim, the  
2 United States would incur all appropriate cautions in  
3 responding to it, including (indiscernible) discovery or  
4 bifurcate considerations that counterclaim so as to preserve  
5 the Court's scheduling orders and trial but unless and until  
6 Defendants actually assert any counterclaim, discovery cannot  
7 be extended beyond the claims that they actually allege.

8           **THE COURT:** All right. Ms. Wolf?

9           **MS. WOLF:** Your Honor, while the Defendants do not  
10 disagree that this discovery would be relevant or may be  
11 relevant to counterclaims and affirmative defenses that they  
12 may assert in the future, that not where the limit of the  
13 relevance is. Again, this particular complaint -- all of the  
14 complaints of the other Plaintiffs have sought remedies  
15 regarding, you know, continued involvement of the Department of  
16 Justice and the review of Texas' voting procedures and I think  
17 that it's relevant at least for purposes of discovery for the  
18 Defendants to be able to probe as to how that process is  
19 enforced in the Department of Justice.

20           Again, the documents which have been produced by the  
21 Department of Justice do not provide a sufficient picture for  
22 Defendants in order to assess the evaluation of that process  
23 nor even if the documents differ by complete picture should the  
24 Defendants be precluded from using the deposition form of  
25 testimony which several cases have held is a unique form of



1 discovery in and of itself. And so, you know, the argument  
2 that because you don't -- you have a document and should be --  
3 you should be able to take that position we don't think should  
4 stand.

5 Furthermore, again, we sought to limit this. We  
6 sought to limit this going back to 2004 and we think that  
7 that's a reasonable time -- limitation on it and finally, in  
8 the complaint, several of the Plaintiffs have, again, not just  
9 limited their complaint to allegations regarding the  
10 administrative preclearance of Texas' voting practices in the  
11 class.

12 They've also incorporated several -- by a Court  
13 decision, they've incorporated Section 2 of The Voting Rights  
14 Act and, for example, in the complaint of the NAACP and  
15 (indiscernible), they've asserted that in the past three  
16 decades, they were more successful suits against Texas by  
17 jurisdiction filed under Section 2 of The Voting Rights Act  
18 challenging discriminatory election methods and redistricting  
19 plans than any other state in the country. And that in and of  
20 itself -- that puts into issue why were those suits brought in  
21 Texas in particular and I think it's very (indiscernible)  
22 entitled to probe into that particular area.

23 **THE COURT:** All right. Let's move on to Topic 5.

24 **MS. BALDWIN:** Topic 5 which I believe is the federal  
25 observers, again, you would say -- or examiners. This is,

1 again, about what the Department does nationwide and even the  
2 observers and monitors to enforce a variety of federal  
3 statutes. They're just not relevant here. These topics,  
4 again, seem to be aimed at discovering DOJ's enforcement  
5 priorities and for no proper reason. Again, this is very  
6 overbroad. It's impossible to know what is being sought here  
7 to do a proper designation even if this were relevant.

8 **THE COURT:** Okay. Ms. Wolf?

9 **MS. WOLF:** Your Honor, I think this is particularly  
10 relevant because the United States in its complaint has sought  
11 the appointment of federal observers pursuant to Section 3A of  
12 The Voting Rights Act to observe elections in Texas. I don't  
13 know what remedies that they are seeking in our complaint and  
14 for the same reason that it was relevant for us to probe  
15 because the (indiscernible) by various Plaintiffs.

16 This is also a relevant subject of probing in terms  
17 of depositions in terms of how the process is handled, when  
18 federal observers are actually appointed, why they're appointed  
19 and in terms of the deliberative process privilege, again I  
20 would argue qualified privilege in here where for purposes of  
21 the remedy, the purposes of the Government's actions in these  
22 particular areas would be relevant. We should be entitled to  
23 probe at least in discovery as to the general processes and  
24 procedures that the United States undertakes when deciding to  
25 appoint federal observers or when the federal observers are

1 actually appointed and conducting the work that they're  
2 directed to do by this Court.

3 **THE COURT:** All right. Let's move to Topic 6.

4 **MS. BALDWIN:** Your Honor, that's essentially  
5 duplicative of Topic 5, election monitoring. Again, it's just  
6 not relevant. This department does a variety of election  
7 monitoring, none that has anything to do with does SB 14  
8 violate Section 2 of The Voting Rights Act because it has  
9 discriminatory results or a discriminatory purpose.

10 **THE COURT:** Okay. Ms. Wolf?

11 **MS. WOLF:** Your Honor, for many of the same reasons  
12 we asserted in response to the Government's response to Topic  
13 5, we would also, again, assert that this is relevant to the  
14 remedy sought by the United States and we think that the  
15 processes and the procedures under which state government  
16 observes elections in Texas or elsewhere are relevant to the  
17 issue of production.

18 **THE COURT:** All right. We're moving on to Topic 10.

19 **MS. BALDWIN:** Your Honor, this is asking for various  
20 intake laws and complaint systems. This topic is completely  
21 cumulative. We have produced in document discovery every  
22 complaint that we have received related to photo ID or SB 14  
23 from Texas or regarding Texas and we've also produced every  
24 allegation of voter fraud related to Texas that, you know, is  
25 from -- came in through the email address listed as a topic.

1 No further discovery is warranted on this.

2 **THE COURT:** All right. Ms. Wolf?

3 **MS. BALDWIN:** They have all the facts.

4 **MS. WOLF:** Your Honor, I'd just like some  
5 clarification from the United States on one point, because my  
6 understanding was (a) that they'd only produced complaints  
7 relating to in-person voter impersonation as a form of voter  
8 fraud as opposed to every form of voter fraud, so that would be  
9 one point that we would make, is that the complaints that they  
10 received in terms of other forms of election crime would also  
11 be relevant information. And since we don't have the  
12 documents, we're at least entitled to probe a witness as to  
13 those complaints. But notwithstanding that distinction, while,  
14 again, we have received some documents, you know, relating to  
15 what this email address was used in terms of SB14, we think as  
16 a larger point, we're entitled to inquire into the process as  
17 to how does the United States choose, you know, which  
18 complaints to investigate? How does the United States choose  
19 which individuals to respond to. Just as a general matter from  
20 our review of the document production, in fact, you know, some  
21 inquiries are followed up on by the United States, some are  
22 not. And these inquiries are coming in from various entities.  
23 They're coming in from political parties and they're coming in  
24 from the (indiscernible). There's also sorts of different  
25 interest groups that are submitting submissions in terms of a

1 preclearance submission or just generally in terms of  
2 complaints. And we think that given that deposition testimony  
3 is a unique vehicle, we are entitled to probe as to the  
4 processing of those complaints, as to the priority given to  
5 those complaints, and as to whether there are procedures in  
6 place which determine how the United States chooses to respond.  
7 They're a very busy agency and cannot respond to all complaints  
8 at the same time, and so how do they choose to respond to those  
9 complaints? And to the extent that the United States were to  
10 assert (indiscernible) privilege in terms of that process, we  
11 would again argue that that's subject to the working law  
12 exception, which is iterated in the (indiscernible) case out of  
13 the Fifth Circuit in terms of the fact that that  
14 (indiscernible) responding is basically a (sic) unwritten law  
15 that provides how they prioritize and address these particular  
16 type of complaints.

17 **THE COURT:** Okay. So now we're jumping where? To --  
18 I'm going down through the statement that Defendants provided  
19 on Monday, and I guess we're kind of back into topic seven?

20 **MS. WOLF:** Yes, your Honor. This is Lindsey Wolf.  
21 If the United States is okay, we would argue that basically  
22 topics seven, eight, and 11 through 30, as well as part of 37,  
23 are all relating to various iterations of facts relating to  
24 election crimes and voter fraud. So we would be prepared to  
25 address those topics in bulk if the United States would be

1 agreeable to that.

2 **THE COURT:** Okay. Ms. Baldwin?

3 **MS. BALDWIN:** I think that I'm, you know, happy to  
4 proceed. I would probably address 11 through 30 and break out  
5 seven and eight, with the Court's permission.

6 **THE COURT:** That's fine.

7 **MS. BALDWIN:** Taken together, topics 11 through 30  
8 testimony on literally every allegation, investigation,  
9 prosecution, or potential prosecution for any instance of  
10 "election crime or voter fraud" which Defendants have very,  
11 very broadly defined nationwide. These topics are incredibly  
12 overbroad, incredibly burdensome, and fundamentally irrelevant  
13 and seeks to pierce well-established government privileges.  
14 Your Honor, this case is about a single type of voter fraud,  
15 in-person impersonation in Texas. It's not about literally any  
16 kind of conduct of which one or more federal law enforcement  
17 officials nationwide may be aware that may violate some state  
18 or federal law related to an election anywhere in the nation,  
19 which is essentially the breadth of testimony the Defendants  
20 are asking that we designate witnesses on. It's incredibly  
21 overbroad, your Honor, because to prepare for this topic, it  
22 would involve seeking information from literally every single  
23 U. S. Attorney's office and FBI field office in the country.  
24 And on instances of law breaking that have absolutely nothing  
25 to do with SB14, such as double voting or (indiscernible) or

1 absentee ballot fraud or countless other election  
2 irregularities. SB 14 has nothing to do with those sorts of  
3 crimes. This case, as I said, your Honor, is about whether the  
4 State of Texas knew when it enacted a law; not what anyone else  
5 knew, including the federal government, much less what the  
6 federal government noticed years after the law was enacted. To  
7 try and work through this impasse, we've offered to explore  
8 giving Defendants a declaration with the only potentially  
9 relevant facts of which we are aware, namely -- because of the  
10 period of time that we've located information for, which is  
11 approximately 2007 to the present, there have been no federal  
12 prosecutions anywhere in the country for in-person voter  
13 impersonation fraud -- none. We've asked Defendants what facts  
14 more than this they could possibly be seeking and why they need  
15 them, and they haven't been able to explain any reasons. The  
16 manner in which Defendants are seeking information not just  
17 about public prosecutions, but about investigations of a wide  
18 variety of totally unrelated crimes raises very serious  
19 information for the department in light of the law enforcement  
20 privilege. There is no reason for this Court to consider  
21 requiring DOJ to give testimony on topics that are going to  
22 invade that privilege. And, again, because of the seriousness  
23 of that, we would seek all options to block any such testimony  
24 before it happened were that to be ordered.

25 **THE COURT:** Okay. So that was on 11 through 30. Do

1 you want to go ahead and address seven, eight, and 37?

2 **MS. BALDWIN:** Sure. On seven, this is -- it's  
3 related because it is, again, on voter fraud, but seven is  
4 about publically available reports from the --

5 **THE COURT:** Okay. I was going to ask about that.  
6 Why, Ms. Wolf -- it -- can you -- do you not have access to  
7 that? Is that not a publically -- a public report?

8 **MS. WOLF:** No, your Honor. The Department has  
9 produced the public report -- the public integrity reports  
10 going back from at least to the 1990s until 2010. And I  
11 understand that there's one poll from 1995 that they didn't  
12 produce which we got before, but just from a documentary  
13 statement. And then also there's the 2013 report's not yet  
14 available online. So --

15 **THE COURT:** Okay.

16 **MS. WOLF:** -- overall we do have those actual  
17 reports. But the problem is, again, a document versus a  
18 deposition issue in that at the end, for example -- I looked  
19 for the reports today -- at the end of the report, it indicates  
20 where there have been prosecutions for election crimes, but  
21 it's not clear from the face of the report whether that is the  
22 entire universe, whether that only applies to actual  
23 prosecution --

24 **THE COURT:** So you're just trying to --

25 **MS. WOLF:** -- versus whether that --



1           **THE COURT:** You're just trying to clear up the  
2 information in the report on that issue?

3           **MS. WOLF:** In respect to topic seven, yes, your  
4 Honor.

5           **THE COURT:** Okay. Anything else on seven,  
6 Ms. Baldwin?

7           **MS. BALDWIN:** We would just state, your Honor, these  
8 are reports which they speak for themselves. Designating a  
9 witness on them is, again (indiscernible) contain many, many  
10 prosecutions on things like bribery and other corruption that  
11 has no relevance to the claims here. We don't see how we can  
12 possibly produce a witness on this and what relevance it has  
13 given that as to this and every topic, how DOJ exercises its  
14 prosecutorial discretion is simply privileged and not relevant  
15 to any claim.

16           **THE COURT:** All right. What about topic eight?

17           **MS. BALDWIN:** Eight is similar to seven in that it  
18 relates to what's called the Ballot Access Voting and Integrity  
19 Initiative, which is a long-running law enforcement effort,  
20 that involves trainings and prioritization and coordination of  
21 certain election crimes. We produced documents, over a  
22 thousand pages of training documents, and, again, it's  
23 cumulative, it's a topic that's vague. What more Defendants  
24 are looking for on this, they haven't been able to tell us any  
25 non-privileged facts that they would be looking for. There's -

1 - it would be hopelessly impossible for us to designate anyone  
2 as the topic is currently formulated, and it's just not  
3 relevant.

4 **THE COURT:** Ms. Wolf?

5 **MS. WOLF:** Just as to topic eight, your Honor, we've  
6 looked at the Ballot Access and Voting Integrity Initiative  
7 reports that the Department has produced; and, unfortunately,  
8 there are holes in data that are attached to those reports.  
9 And while some of those reports do contain specifics relating  
10 to voter fraud and election fraud -- and off the top of my head  
11 I there's one, it was a 2002 to 2005 -- it's an incomplete  
12 picture and we don't have, to my understanding, reports from  
13 every year that detail that particular type of information.  
14 And even assuming that we did have those -- that information,  
15 which I don't believe we do, it's again a question of these  
16 election crime cases, which are included in these training  
17 materials, are perhaps examples or are perhaps representative,  
18 and they don't represent the entire universe of the information  
19 related to prosecutions or allegations or other issues that go  
20 beyond just the case that was decided and then summarized and  
21 attached possibly as an example to the back of the report. So,  
22 again, as to topic eight, we would argue that we are entitled  
23 to probe a witness relating to how the reporting is done,  
24 what's put in those reports, why certain cases are selected and  
25 others are not, particularly because it's dealing with training

1 materials. And I think that that -- it's a similar argument  
2 that we would have with respect to the public integrity  
3 reports. We're entitled to probe a witness as to the contents  
4 of those particular documents.

5 **THE COURT:** Okay. So what's left, 37?

6 **MS. WOLF:** And, your Honor, we haven't addressed 11  
7 through 30 from the defense yet, but I'll be happy to let --

8 **THE COURT:** You can proceed --

9 **MS. WOLF:** -- Ms. Baldwin address 37 before I turn  
10 back to that.

11 **THE COURT:** You can proceed to address 11 through 30.

12 **MS. WOLF:** Okay. Your Honor, with respect to 11  
13 through 30, I think it's incorrect to start by saying that the  
14 only issue that's been put into (indiscernible) this allegation  
15 relates to in-person voter fraud. In the United States'  
16 complaint, they challenged Texas to present evidence on the  
17 election integrity, which was the stated purpose of the  
18 legislator in passing SB14. I believe that they specifically  
19 said that the voter ID proponents cite virtually no evidence  
20 during or after -- actually, I started reading the wrong one --  
21 they state the policies proffered for this particular  
22 restrictions contained in SB14 are tenuous and unsupported in  
23 the legislative record or by other evidence. And in turn, in  
24 paragraph 29, they do provide that the stated purpose was to  
25 ensure the integrity of the election. The Defendants would

1 argue that, you know, the integrity of the elections is broader  
2 than just in-person voter fraud. But notwithstanding that, I  
3 don't think that the Defendants have a complete picture of the  
4 amount of in-person voter fraud or, for that matter, the amount  
5 of various other election crimes that have been prosecuted or  
6 investigated or brought to the attention of the United States'  
7 Department of Justice. And I would also argue that not only  
8 the Defendants -- or not only the United States, but the other  
9 Plaintiffs have also put into issue issues regarding  
10 allegations in our complaint which concern the fact that the  
11 State has not produced evidence of election fraud, and they  
12 have not produced evidence showing that election fraud was --  
13 the integrity of elections was addressed by the legislature.  
14 On top of that, the Defendants have been served with discovery  
15 by some of the other Plaintiffs for -- the Office of the  
16 Attorney General related to very, very broad allegations and  
17 the Attorney General's knowledge of voter fraud, which goes  
18 beyond just voter impersonation and goes into complaints or  
19 allegations for (indiscernible) investigation, investigation  
20 charges, prosecution, which she stated going back to January of  
21 2000 in some instances and other instances has no date range.  
22 And my understanding is that those issues in terms of the OAG  
23 producing (indiscernible) being worked out with the Plaintiff.  
24 But the point is that those issues have been brought and that  
25 Plaintiff clearly thinks that they are relevant, and so we

1 argued that we are entitled to that source of information in  
2 terms of the unique institutional knowledge that the Department  
3 of Justice has. In terms of the documents that they've  
4 produced, we don't have complete logs of voter fraud complaints  
5 that it's received. I know they were discussing the public  
6 integrity reports and the (indiscernible) reports. We don't  
7 have a complete picture of the statistics for what's a  
8 representative example versus the complete universe of the  
9 complaints or allegations that we receive. And, again today,  
10 raw factual data is not protected by (indiscernible) process or  
11 other privilege. There's a case (indiscernible) *versus the U.*  
12 *S.*, which is (indiscernible) Michigan case, which does not --  
13 which protects communications -- which does not protect  
14 communication, the raw data on which decisions can be  
15 formulated. In terms of law investigation privilege, the data  
16 the Defendants are seeking is largely historical data. And I  
17 think that the courts in the Fifth Circuit (indiscernible)  
18 Frankenhauser (phonetic) factors, which is the case out of the  
19 Eastern District of Pennsylvania, and several of the  
20 Frankenhauser factors involve whether the party seeking  
21 discovery is an actual or potential Defendant in any criminal  
22 proceeding either pending or reasonably likely to follow from  
23 the incident in question; whether the police investigation has  
24 been completed; whether any intradepartmental disciplinary  
25 proceedings have arisen or may arise from the investigation;

1 and the importance of the information sought to the plaintiff's  
2 case. And those are just some of the factors. And at the same  
3 time (indiscernible) *U. S. Department of Homeland Security* case  
4 out of the Fifth Circuit that determines the law enforcement  
5 privileges founded by relevance and time constraints. And, you  
6 know, most of the data that we're seeking going back to 2004 is  
7 historical data, I'm assuming it's related to investigations  
8 which have already been completed, or (indiscernible) which  
9 have already been found or allegations which have already been,  
10 you know, acted upon and investigated. And so we don't think  
11 that the law enforcement privilege in and of itself is a  
12 relevant exception here. And I think that -- again, we think  
13 that these topics are relevant in the sense that it's not just  
14 limited to the State of Texas. I think integrity of elections  
15 could apply nationwide in terms of the universe of voter fraud  
16 or election crimes that have happened nationwide. I think the  
17 definition, while Ms. Baldwin referred to it as broad, the  
18 definition that we used in our 30(b)(6) notice was derived  
19 directly from a 2006 report of the Election Assistance  
20 Commission -- the United States Election Assistance Commission,  
21 and we tried to, at least in terms of the definition of "voter  
22 fraud," narrow it to particular topics which we thought were  
23 relevant to the integrity of elections as it relates to SB14.  
24 And so I think, your Honor, to preclude us from discovery on  
25 this topic while, you know, we're working with the Plaintiff to

1 allow this type of discovery for them, and also while this is  
2 the stated purpose of this bill -- and, finally, while the  
3 Department of Justice has very unique institutional knowledge  
4 of these particular types of crimes and instances would just  
5 not be fair, and I think that the -- if we're working in good  
6 faith to try to get this information to the other side, I think  
7 we, too, should be entitled to it as well.

8 **THE COURT:** Do you want to say anything further on 11  
9 through 30, Ms. Baldwin?

10 **MS. BALDWIN:** Just in brief, your Honor. What is at  
11 issue here is what the State of Texas knew when it passed the  
12 statute that is alleged to be racially discriminatory. What is  
13 not at issue is what various people in the federal government  
14 may know about a host of unrelated election crimes throughout  
15 the country.

16 **THE COURT:** All right. And so what's left, 37?

17 **MS. BALDWIN:** Yes, your Honor. Thirty-seven is,  
18 again, calculations, reports, audits, relating to the effect of  
19 SB14 or any other photo ID law on-hand in instances of voter  
20 fraud or election crime. This topic is overbroad and vague.  
21 And as we discussed thus far with Defendants, we're not --  
22 counsel is not currently aware of any such reports; and to the  
23 extent that they relate to other state laws, they would be  
24 irrelevant. Anything that relates to SB14 has been produced in  
25 this case.

1           **THE COURT:** All right. Ms. Wolf?

2           **MS. WOLF:** Your Honor, in terms of the study point,  
3 what I would argue is that while counsel may represent that no  
4 such study exists, that's not the same as a deponent coming in  
5 and saying the Department of Justice has not examined the  
6 effects of photo ID laws on eliminating election crimes or  
7 voter laws, and we think that those are two very different  
8 animals. So while the response may be to the witness that no  
9 such studies exist, we believe that we are entitled to probe as  
10 to that type of information.

11           And just -- your Honor, I just want to revisit one  
12 point that Ms. Baldwin raised with respect to topics 11 through  
13 30. I think the issue in a Section 2 analysis is that we need  
14 to balance the burden of the particular photo ID law with the  
15 state's interest. And so we need to be able to see, you know,  
16 whether or not the legislature knew of these particular  
17 instances of voter fraud or election crime is not necessarily  
18 the only issue that's relevant. If there was a significant  
19 amount of election crime and voter fraud, that also goes to the  
20 balancing test that is relevant under Section 2. So I just  
21 wanted to add that as respect to topics 11 through 30.

22           **THE COURT:** Okay.

23           **MR. CLAY:** Your Honor, this is Reid Clay for the  
24 State of Texas. If I can just elaborate on that for one  
25 second.



1           **THE COURT:** Yes.

2           **MR. CLAY:** There are many different claims in this  
3 case, and one issue certainly is what the purpose of the  
4 legislature was in enacting SB14. Another issue is whether or  
5 not the burden imposed by SB14 is justified by some sort of  
6 state's interest. Texas has, in many cases in recent history,  
7 reacted to instances of election fraud or election crimes in  
8 other states, enacted laws in order to try and prevent those  
9 from happening in Texas. So part of our purpose in asking for  
10 some deposition testimony from the Department of Justice on  
11 things other than in-person voter fraud -- which, by the way,  
12 is not the only type of fraud that can be prevented or deterred  
13 by SB 14 -- is to see what the State of Texas could be -- could  
14 use to justify its actions in enacting SB14 based upon  
15 preventing other types of election crimes and instilling  
16 integrity in the election system in Texas, which is a valid  
17 purpose under Supreme Court case law for enacting voter  
18 identification law. So the idea that voter impersonation is  
19 the only thing that's at issue here or what the legislature  
20 knew about voter impersonation is the only thing at issue here,  
21 is flatly wrong and is the reason that we've requested the  
22 information that we have.

23           **THE COURT:** All right. I think those were all that  
24 were left, at least according to the statement that was filed  
25 by the Defendants on the day -- I need to look at those issues

1 a little more, so I don't know if I'll either get you all back  
2 on a conference call or issue a short order or -- when -- let  
3 me address some other matters and then I'll figure out when I  
4 can have rulings on those issues on the protective order filed  
5 -- motion for protective order filed by the government. Let's  
6 see.

7 I know today there was a motion to compel regarding  
8 some interrogatories that was filed by the Defendants. It was  
9 just filed today. I guess we'll have to address that at  
10 another time, Mr. Scott -- or who wants to address that?

11 **MS. WOLF:** Your Honor, this is Lindsey Wolf. I'm  
12 happy to address that. I think where we are on that particular  
13 motion -- and I do understand it was just filed today -- is  
14 that we're just seeking -- we didn't receive answers to our  
15 interrogatories from either the Ortiz group of Plaintiffs or  
16 the LULAC Plaintiffs. They did kind of serve objections.  
17 However, there were no answers that were contained in those  
18 interrogatories. And we tried to confer and see if they would  
19 produce answers to those interrogatories. They've indicated  
20 that they are going to stand on their objections and not  
21 provide sworn statements by their clients. One point of  
22 verification, it appears that LULAC had actually submitted what  
23 looked like an answer beneath their objections, but no one has  
24 actually verified that answer. So Defendants are essentially  
25 seeking to compel the Ortiz (indiscernible) group and also the

1 Veasey-LULAC group to provide sworn answers by their clients to  
2 the interrogatories that were served on them.

3 **THE COURT:** Mr. Dunn, I know it was just filed today,  
4 but do you want to say anything on that issue?

5 **MR. DUNN:** Sure. Thank you, Judge. This is Chad  
6 Dunn for the court reporter. I think the representation of the  
7 issue by the State as just laid out, we strongly disagree with,  
8 and we're -- we have objected to the interrogatories. I  
9 actually believed that this issue had been resolved in a  
10 conference call and then I saw the motion today. So I think  
11 without taking it point-by-point would be wasting the Court's  
12 on how I think the issue is different than has been relayed so  
13 far. I'd recommend we take this up after the parties can  
14 confer again about it.

15 **THE COURT:** That's fine. Ms. Van Dalen?

16 **MS. VAN DALEN:** I agree --

17 **THE COURT:** Okay.

18 **MS. VAN DALEN:** -- with the proposal (indiscernible)

19 **THE COURT:** Did you all start depositions this week?  
20 Anybody wants to speak on that.

21 **MR. ROSENBERG:** Ezra Rosenberg. Yes, we did, your  
22 Honor. We've had, I believe, three depositions taken this week  
23 so far.

24 **THE COURT:** Any issues on any privileges at this  
25 point?

1           **MR. SCOTT:** Your Honor, John Scott. One of the  
2 things that came up in our deposition -- it's my understanding  
3 it also came up in the deposition yesterday -- was the use of  
4 documents which had previously been ruled as privileged. You  
5 ordered us to turn those documents over to the Plaintiffs so  
6 that they could review them. It limited in your order, which  
7 was Document 226, it limited the use of those and who could  
8 make use of any portion of those. It also set forth the way  
9 that they could be used, which was bring them to you before  
10 they were introduced at trial. What has happened is they're  
11 now being used on the legislators, and we have set up a process  
12 at least to handle the first two systems whereby we're putting  
13 those under seal and trying to keep those remaining under seal  
14 in addition to, I guess, the way we're dealing with the  
15 question and answer process on those documents.

16           **THE COURT:** Okay.

17           **MR. SCOTT:** But it sure would be helpful to have a  
18 little more guidance in the form of a written order that both  
19 sides I think would agree would be nice to fall back on to say  
20 this is why we're doing it and the way we're doing it.

21           **THE COURT:** Okay.

22           **MR. SCOTT:** Because I think the existing order does  
23 not --

24           **THE COURT:** Address it.

25           **MR. SCOTT:** -- allow for such a use of them. I don't

1 think it prevents the use, but I sure don't think it provides  
2 for it.

3 **THE COURT:** Okay. I --

4 **MR. ROSENBERG:** And, your Honor -- Ezra Rosenberg, if  
5 I may, just to add to that. The example today is, of course,  
6 very simple. We were questioning Representative Riddle and we  
7 questioned her with the documents that she produced; not with  
8 any other documents. And we put on the record they were highly  
9 confidential, which meant that they are under seal, and we  
10 think that's an appropriate way to deal with it. And --

11 **THE COURT:** It seems like -- and there is no definite  
12 order -- but it seems like we kind of addressed it at one of  
13 our conferences how that might be handled. But if you want a  
14 written order, that's fine, but I'm going to suggest you all  
15 propose maybe what you all have been doing, if it's agreed to,  
16 or where the issues are as to what I need to clear up.

17 **MR. SCOTT:** That's great, your Honor. And this is  
18 John Scott for Defendants. We'll take a first draft at it and  
19 get it over to Mr. Rosenberg and to the DOJ and all those  
20 parties.

21 **THE COURT:** Okay. Are there any other issues for  
22 today?

23 **MR. FREEMAN:** Your Honor, this is Dan Freeman on  
24 behalf of the United States. We've happily cleared up almost  
25 all of the motions to quash the subpoenas that are in front of

1 the Court. Just to give the Court a status update, there's  
2 still one motion to quash a deposition subpoena that remains in  
3 front of Judge O'Connor of the Northern District of Texas.  
4 That motion has -- there's a motion to quash that's been fully  
5 briefed and as has the motion to transfer, but Judge O'Connor  
6 has not yet ruled on either of those motions. There's also  
7 still one document subpoena that remains before the Court, and  
8 I emailed Ms. Cortez about this I believe yesterday, saying  
9 that we would like to try to resolve that single motion to  
10 quash today if the Court is looking to --

11 **THE COURT:** I'm sorry --

12 **MR. FREEMAN:** -- hear the very limited part that's  
13 left.

14 **THE COURT:** Brandy is shaking her head. We may have  
15 missed that, so --

16 **MR. FREEMAN:** Oh.

17 **THE COURT:** Do you know what DE it is?

18 **MR. FREEMAN:** If you'll give me just one moment, I  
19 can tell you.

20 **THE COURT:** Okay.

21 **MR. FREEMAN:** This was just the motion to quash the  
22 deposition subpoena -- or the deposition subpoena that was  
23 served on the Texas Legislative Council, and that is currently  
24 in Docket Number 2:14-cv-226. It's one of the motions to quash  
25 that was transferred into the Western District.

1           **THE COURT:** Okay. So what do we need to do on that?  
2 I have not looked at that, but if you all want to discuss it.  
3 What's the --

4           **MR. FREEMAN:** Mr. D'Andrea and I have conferred and  
5 we've substantially narrowed the issues, I believe, and I'll  
6 Mr. D'Andrea speak first on that.

7           **THE COURT:** Okay. We had discussed this before, but  
8 there were some matters you all were going to discuss further,  
9 right? I remember that now.

10          **MR. FREEMAN:** Yes, your Honor, and we did get  
11 together and --

12          **THE COURT:** There was like search terms and --

13          **MR. FREEMAN:** -- reached an agreement about the  
14 search terms --

15          **THE COURT:** Right.

16          **MR. FREEMAN:** -- but I think probably Mr. D'Andrea  
17 should probably speak first because it's his motion, so I'll  
18 pass that over to him if that works.

19          **THE COURT:** Okay.

20          **MR. D'ANDREA:** Good afternoon, your Honor, this is  
21 Arthur D'Andrea for the state -- third party legislators. The  
22 only part remaining is the cumulative complaint objection we  
23 had, and that is the TLC subpoena requests documents from 85  
24 different people, and we're asking the Court to cut 28 people  
25 from that list. Cutting those people we think it'll shorten

1 the time it takes us to gather and review all of these TLC  
2 documents. And it's already going to take a long time. And  
3 cutting the people will not harm the Plaintiffs because these  
4 people are all duplicate; because these people, these are the  
5 very same people who DOJ have already issued direct subpoenas.  
6 So, for example, DOJ asked Speaker Straus to search his work  
7 email for everything related to voter ID. And they asked  
8 Representative Jose Aliseda to do the same, to search work  
9 emails for everything related to voter ID. And they did this  
10 for 28 legislators. And now, among the people they want --  
11 they've gone to TLC and asked TLC to search Speaker Straus's  
12 work email for voter ID --

13 **THE COURT:** Okay.

14 **MR. D'ANDREA:** -- related documents. They --

15 **THE COURT:** Let me ask Mr. Freeman -- let me ask  
16 what's the purpose of that, Mr. Freeman?

17 **MR. FREEMAN:** Your Honor, the server -- these  
18 subpoenas were all served at the same time, and (indiscernible)  
19 searches are generally used with large organizations --

20 **THE COURT:** No, what -- they sound duplicative and --  
21 to me. So what's the purpose of doing that?

22 **MR. FREEMAN:** The reason for doing (indiscernible)  
23 search essentially are uniformity, completeness of the  
24 search --

25 **THE COURT:** No, I don't think that's appropriate.



1           **MR. FREEMAN:** -- (indiscernible) D'Andrea --

2           **THE COURT:** I don't think that's appropriate.

3           **MR. FREEMAN:** Okay, your Honor.

4           **THE COURT:** So I'm sustaining --

5           **MR. FREEMAN:** We would simply -- we can submit a  
6 proposed order that would limit that subpoena to individuals  
7 who have not separately received a personal subpoena. Would  
8 that be the best interpretation of the Court's order?

9           **THE COURT:** That -- yes. I'm sustaining the  
10 objection. Mr. D'Andrea, is that it on that issue?

11           **MR. D'ANDREA:** Yes, your Honor, thank you.

12           **THE COURT:** Okay. Anything else left on that motion  
13 to quash regarding the TLC?

14           **MR. FREEMAN:** I believe that's all, your Honor.

15           **THE COURT:** Okay. So --

16           **MR. D'ANDREA:** That's all.

17           **THE COURT:** -- you all are going to submit an order  
18 based on that ruling and that will take care of that motion,  
19 correct?

20           **MR. D'ANDREA:** This is Arthur D'Andrea. Yes, it  
21 will, your Honor.

22           **THE COURT:** Okay. Anything else that's left hanging?

23           **MS. BALDWIN:** Your Honor, this is Ms. Baldwin for the  
24 United States. The Court is still considering the motion for  
25 the protective order, if there are particular topics that are

1 still at issue, we would just request that there be written  
2 briefing on those before there would be any such order to have  
3 that deposition proceed.

4 **THE COURT:** You're talking about what we were  
5 discussing?

6 **MS. BALDWIN:** Yes, your Honor.

7 **THE COURT:** Okay. Because what I have so far -- I  
8 know there was some earlier briefing. Well, there was the  
9 motion for protective order that was filed, and then there was  
10 a joint statement I believe just kind of let me know what your  
11 progress was on conferring. I believe that's the one we had an  
12 issue on regarding the parties conferring. And then what was  
13 filed today was just really another statement telling me what  
14 categories were left; is that right?

15 **MS. BALDWIN:** Yes, your Honor, that's correct. And  
16 just what we would request is that on any of these, given both  
17 the gravity of the issues and the burden, that Defendants -- if  
18 the Court is considering denying the request as to any of the  
19 topics, the Defendants be required to put up a reason as to  
20 their basis for why they're entitled to this --

21 **THE COURT:** Yeah.

22 **MS. BALDWIN:** -- and for (indiscernible) a response.

23 **THE COURT:** I think that would be helpful to the  
24 Court. Ms. Wolf, do you have any comments on that?

25 **MS. WOLF:** No, your Honor. I mean, we'll do whatever

1 the Court --

2 **THE COURT:** Okay.

3 **MS. WOLF:** -- requests us to do. I mean, I think  
4 we've explained --

5 **THE COURT:** How --

6 **MS. WOLF:** -- some of it today, but if the Court  
7 would like us to do that, we will do what the Court directs.

8 **THE COURT:** How much time do you need to get a  
9 response on file to that motion -- regarding what's left, what  
10 was discussed today?

11 **MS. WOLF:** Your Honor, I would ask for ten days, if  
12 possible. But one sort of housekeeping matter is we will then  
13 be approaching the end of fact discovery, so if we can just  
14 agree with the United States that that's not going to preclude  
15 us any and that your Honor does allow us to proceed with a  
16 deposition from actually proceeding with a deposition.

17 **THE COURT:** Or I will order that if they don't agree.  
18 So -- okay, so within ten days we'll get that and then I'll  
19 look at it again and see if I have any further questions.

20 **MS. BALDWIN:** And, your Honor, within say five days  
21 thereafter permitting us to file a short reply.

22 **THE COURT:** That's fine.

23 **MS. BALDWIN:** Okay, thank you, your Honor.

24 **THE COURT:** Okay. So you all are still -- so we  
25 addressed the Defendants' motion to compel the production of

1 federal databases. You all are conferring regarding the  
2 deposition of Coby Shorter. There's going to be some briefing  
3 on the motion -- United States' motion for protective order on  
4 the Rule 30(b)(6) deposition. You all are going to confer  
5 further the Ortiz-LUPE (phonetic) Plaintiffs and Veasey-LULAC  
6 Plaintiffs regarding the motion to compel that was filed today.  
7 And I think that's it, counsel. So --

8 **MS. WOLF:** Thank you, your Honor.

9 **THE COURT:** All right. You're -- well --

10 **MR. SPEAKER:** Thank you, your Honor.

11 **THE COURT:** -- I guess we should discuss --

12 **MR. SPEAKER:** Thank you, your Honor.

13 **THE COURT:** -- do we need another conference -- no, I  
14 guess not.

15 **(This proceeding was adjourned at 4:08 p.m.)**

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

June 19, 2014

TONI HUDSON, TRANSCRIBER